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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 HONEY McEWAN, SUSAN  
12 CAMERON, and LILLIAN GILDEN,  
individually and on behalf of all others  
similarly situated,

13 Plaintiffs,

14 vs.

15 OSP GROUP, L.P., a Delaware  
16 Limited Partnership, OSP GROUP  
17 MERCHANT, INC., a Delaware  
Corporation, OSP GROUP, INC., a  
18 Delaware Corporation, OSP GROUP,  
LLC, a Delaware Limited Liability  
19 Company, JESSICA LONDON, INC., a  
Delaware corporation; and DOES 2-50,  
20 inclusive,

21 Defendants.  
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CASE NO. 3:14-cv-02823 BEN (WVG)

**THIRD AMENDED CLASS  
ACTION COMPLAINT FOR  
VIOLATION OF THE  
CALIFORNIA INVASION OF  
PRIVACY ACT  
[Cal. Penal Code § 630 *et seq.*]**

**GENERAL ALLEGATIONS**

1. Plaintiff Honey McEwan (“McEwan”) is an individual residing in Healdsburg, California. Plaintiff Susan Cameron (“Cameron”) is an individual residing in Orange, California. Plaintiff Lillian Gilden (“Gilden”) is an individual residing in Porterville, California. McEwan, Cameron, and Gilden are collectively referred to as “Plaintiffs.”

2. Plaintiffs are informed and believe and thereon allege that defendant OSP Group, L.P. is a Delaware limited partnership that does business in this judicial district.

3. Plaintiffs are informed and believe and thereon allege that defendant OSP Group Merchant, Inc. is a Delaware corporation that does business in this judicial district.

4. Plaintiffs are informed and believe and thereon allege that defendant OSP Group, Inc. is a Delaware corporation that does business in this judicial district.

5. Plaintiffs are informed and believe and thereon allege that defendant OSP Group, LLC is a Delaware limited liability company that does business in this judicial district.

6. Upon the filing of the complaint in this action, plaintiffs were ignorant of the true name of the defendant designated by the fictitious name of DOE 1. Plaintiffs have since discovered that the true name of the defendant originally designated as DOE 1 is Jessica London, Inc., a Delaware corporation (“Jessica London”), and this Third Amended Complaint substitutes the true name for the fictitious name. Plaintiffs are informed and believe and thereon allege that defendant Jessica London is a Delaware corporation that does business in this judicial district.

7. Plaintiffs do not know the names of the defendants sued as DOES 2 through 50 but will amend this complaint when that information becomes known. Plaintiffs allege on information and belief that each of the DOE defendants is

1 affiliated with one or more of the named defendants in some respect and is in some  
2 manner responsible for the wrongdoing alleged herein, either as a direct participant,  
3 or as the principal, agent, successor, alter ego, or co-conspirator of one or more  
4 named defendants. For ease of reference, plaintiffs will refer to the named  
5 defendants and the DOE defendants collectively as “defendants.”

6 8. Defendants OSP Group, L.P., OSP Group Merchant, Inc., OSP Group,  
7 Inc., and OSP Group, LLC removed this lawsuit to this Court pursuant to 28 U.S.C.  
8 § 1332(d) (CAFA jurisdiction). Venue is proper in this judicial district because  
9 defendants have not designated principal offices in California and at least some of  
10 the events giving rise to the class claims occurred in this judicial district.

11 9. During the applicable statute of limitations, while plaintiff McEwan  
12 resided in and was physically present in the State of California, and while she was  
13 using a cordless telephone, McEwan had one or more telephone communications  
14 with defendants’ representatives.

15 10. During the applicable statute of limitations, while plaintiff Cameron  
16 resided in and was physically present in the State of California, and while she was  
17 using a landline telephone, Cameron had one or more telephone communications  
18 with defendants’ representatives in which she provided confidential personal and  
19 financial information to defendants, including her address and credit card  
20 information.

21 11. During the applicable statute of limitations, while plaintiff Gilden  
22 resided in and was physically present in the State of California, and while she was  
23 using a cellular telephone, Gilden had one or more telephone communications with  
24 defendants’ representatives.

25 12. Plaintiffs allege on information and belief that defendants secretly  
26 recorded these communications. Defendants did not notify McEwan, Cameron, or  
27 Gilden that defendants were recording the communications, nor did defendants  
28 obtain plaintiffs’ consent.

1           13. Plaintiffs allege on information and belief that, during the applicable  
2 statute of limitations, defendants routinely recorded incoming and outgoing  
3 telephone communications with customers who resided in and were physically  
4 present in the State of California without notifying the customers that the  
5 communications were being recorded.

6           14. California Penal Code § 632 prohibits the recording of a confidential  
7 communication made by telephone without the consent of all parties to the  
8 communication. California Penal Code § 632.7 prohibits the recording of any  
9 communication without the consent of all parties where one of the parties to the  
10 communication is using a cordless or cellular telephone.

11           15. Defendants' practice of surreptitiously recording telephone  
12 communications violates Penal Code §§ 632 and 632.7.

13                           **CLASS ACTION ALLEGATIONS**

14           16. Plaintiffs bring this lawsuit as a class action under Fed. R. Civ. P. 23.  
15 The class ("Class") plaintiffs seek to represent is defined as follows: "All natural  
16 persons who, while residing in and physically present in the State of California, and  
17 during the applicable statute of limitations: (1) participated in at least one telephone  
18 communication with a live representative of defendants that was recorded by  
19 defendants; (2) were not notified by defendants that their telephone communication  
20 was being recorded; and (3) are identifiable through records held by defendants  
21 and/or third parties. Excluded from the class are all employees of defendants, all  
22 attorneys and employees of defendants' counsel, attorneys and employees of  
23 plaintiff's counsel, and the judicial officers to whom this matter is assigned and their  
24 respective court staff."

25           17. Ascertainability. The members of the Class may be ascertained by  
26 reviewing records in the possession of defendants and/or third parties, including  
27 without limitation defendants' call records, customer records, call lists, and the  
28 secret recordings themselves.

1           18.   Common Questions of Fact or Law. There are questions of fact or law  
 2 that are common to the Class, which predominate over individual issues. These  
 3 common questions include, without limitation: (1) defendants' policies and  
 4 procedures for recording telephone communications with customers in California;  
 5 (2) whether defendants notify their customers that the customers' telephone  
 6 communications are recorded; (3) whether defendants' conduct constitutes a  
 7 violation of Penal Code §§ 632 and/or 632.7; (4) defendants' recordkeeping  
 8 practices; and (5) the appropriate remedies for defendants' conduct.

9           19.   Numerosity. The Class is so numerous that joinder of all Class  
 10 members would be impracticable. Plaintiffs are informed and believe that the Class  
 11 consists of at least 100 members.

12           20.   Typicality and Adequacy. Plaintiffs' claims are typical of the claims of  
 13 the Class members. Like the other Class members, plaintiffs participated in one or  
 14 more telephone communications with defendants that were secretly recorded.  
 15 Plaintiffs have no interests that are adverse to those of the other Class members.  
 16 Plaintiffs will fairly and adequately protect the interests of the Class members.

17           21.   Superiority. A class action is superior to other methods for resolving  
 18 this controversy. On information and belief, because defendants' recording activity  
 19 is not disclosed, class members are unlikely to be aware of their claims. Moreover,  
 20 because the damages suffered by each Class member are low, the expense and  
 21 burden of individual litigation would make it impracticable for members of the  
 22 Class to redress the wrongs done to them. Class certification will also conserve  
 23 judicial resources and avoid the possibility of inconsistent judgments.

## 24                               **FIRST CAUSE OF ACTION**

25                               (Violation of Cal. Penal Code § 630 *et seq.*)

26           22.   Plaintiffs incorporate by reference all of the preceding paragraphs.

27           23.   Plaintiffs allege on information and belief that, within the applicable  
 28 statute of limitations, plaintiffs and the Class members, while residing in and

1 physically present in the State of California, participated in telephone  
2 communications with live representatives of defendants, which communications  
3 were recorded by defendants without the consent of plaintiffs and the Class  
4 members. Defendants did not notify McEwan, Cameron, Gilden, or other Class  
5 members that the communications were being recorded.

6       24. Penal Code § 632 prohibits the intentional recording of a confidential  
7 communication without the consent of all parties to the communication. Plaintiff  
8 Cameron and other Class members who used a landline telephone had an objectively  
9 reasonable expectation that their telephone communications were confidential and  
10 were not being recorded. There were no beeps, warnings, or recording disclosures  
11 played that would lead plaintiffs and the Class members to believe that their  
12 communications were being recorded. Defendants violated § 632 by intentionally  
13 recording the communications with plaintiff Cameron and other Class members who  
14 used a landline telephone without obtaining their consent.

15       25. Penal Code § 632.7 prohibits the intentional recording of a  
16 communication without the consent of all parties where at least one of the parties to  
17 the communication is using a cellular or cordless telephone. Defendants violated  
18 § 632.7 by intentionally recording the communications with plaintiffs McEwan,  
19 Gilden, and other Class members who used a cordless or cellular telephone without  
20 obtaining their consent.

21       26. As a result of defendants' conduct, plaintiffs and the Class members  
22 have been injured. Accordingly, plaintiffs and the Class members are entitled to  
23 statutory damages of \$5,000 per recorded communication pursuant to Penal Code  
24 § 637.2(a)(1) and injunctive relief to halt the secret recording of communications  
25 pursuant to Penal Code § 637.2(b).

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## P R A Y E R

1. For statutory damages as alleged herein;

3. For costs of suit;

5. For such other relief as the Court may deem just and proper.

DOSTART HANNINK &amp; COVENEY LLP

JAMES T. HANNINK

Attorneys for Plaintiffs